



#10

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: James B. Klassen ) Art Unit:  
Serial No. 10/059,560 ) Examiner:  
Filed: January 29, 2002 )  
For: MINIMUM CONTACT SEAL ) Attorney  
POSITIVE DISPLACEMENT ) Ref. No.: P323659  
DEVICE METHOD &  
APPARATUS

RECEIVED  
AUG 05 2003  
OFFICE OF PETITIONS

MAIL STOP PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandra, VA 22313-1450

Certificate of Mailing (37 CFR 1.8a)

I hereby certify that this document (along with any document referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on date shown below.

August 1, 2003  
Date

Liz Kovacs

**REQUEST FOR RECONSIDERATION OF  
PETITION UNDER 37 CFR 1.47 (b)**

Dear Sir,

This is in response to the decision dismissing petition under 37 CFR 1.47 (b) mailed this last April 03, 2003. A response was due this June 03, 2003. A two month extension of time is hereby requested to make the present response due on August 03, 2003. A check in the amount of \$410.00 is enclosed in payment of the extension fee. It is believed that no other fee is due at this time to maintain the application in full force and effect. However, if any such fee is due, please charge this to Deposit Account No. 08-3260.

Attached herewith is a signed Declaration for Utility or Design Patent Application (37 CFR 1.63)

If there is any matter which could be expedited by consultation with the Applicant's attorney, such would be welcome. The Applicant's undersigned attorney can normally be reached at the telephone number set forth below.

08/05/2003 AMONDAF1 00000155 10059560

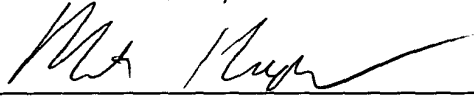
01 FC:1252

410.00 OP

Signed at Bellingham, County of Whatcom, State of Washington this 1<sup>st</sup> day of August, 2003.

Respectfully submitted,  
JAMES B. KLASSEN,

By



Michael F. Hughes, Reg. No. 41,084  
Hughes Law Firm, PLLC  
Pacific Meridian Plaza  
4164 Meridian Street, Suite 302  
Bellingham, WA 98226  
(360) 647-1296  
Fax (360) 671-2489



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON D.C. 20231  
www.uspto.gov

Paper No. 49

**COPY MAILED**

**APR 03 2003**

Outland Technologies  
17032 Murphy Avenue  
Irvine, CA 92614

In re Application of  
Klassen

Application No. 10/059,560

Filed: January 29, 2002

Atty. Dkt. No.: P323659

For: MINIMAL CONTACT SEAL POSITIVE  
DISPLACEMENT DEVICE METHOD AND  
APPARATUS

:  
:  
: **OFFICE OF PETITIONS**  
: DECISION DISMISSING  
: PETITION UNDER 37 CFR  
: 1.47(b)  
:  
:

This is in response to the petition under 37 CFR 1.47(b), filed August 5, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed January 29, 2002 without an executed oath or declaration and naming James B. Klassen as sole inventor.

Accordingly, on March 1, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring substitute drawings, an executed oath or declaration, and surcharge. A courtesy copy of the Notice was mailed April 30, 2002.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

The instant petition lacks requirement (1), (2), (4) and (5).

Petitioner lacks item (1) set forth above. The petition lacks supporting evidence that the non-signing inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refused to sign the oath or

declaration.

The instant petition alleges the non-signing inventor is unavailable to execute the required declaration. The affidavit of Mike Hughes indicates that Terry Knight sent a copy of the application papers to the non-signing inventor's attorney and that to date no reply has been received.

Petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that *bona fide* effort has been made to present a copy of the application papers (**specification, claims, drawings, and oath or declaration**) to the non-signing inventor. Petitioner has failed to provide evidence that the application papers purportedly mailed by Terry Knight were in fact ever sent.

Any renewed petition must be accompanied by evidence that the inventor or the inventor's legal representative received the application papers and thereafter failed to response to requests to execute the declaration. Petitioner may wish to provide the Office with copies of letters sent to the inventor or the inventor's legal representative indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the inventor or the inventor's legal representative receive the application papers and requests to execute the oath or declaration are refused or ignored, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.

As to item (2), the declaration submitted with the instant petition is unacceptable as it fails to comply with the provisions of 37 CFR 1.63 or 37 CFR 1.64. Please note that in a petition under 37 CFR 1.47(b) where no inventor is available to execute the declaration, the declaration must include the last known address of the non-signing inventor and should be executed by a corporate officer, such as the president, vice president, secretary, or treasurer of the assignee on behalf of and as agent for the non-signing inventor. The corporate officer's title or position must be identified in the declaration. If an officer is unavailable to execute the declaration, the declaration may be signed on behalf of the corporation by one whose proof of signing authority has been submitted to the Office, such as the corporation's attorney. The signature block of the non-signing inventor should remain unexecuted. Petitioner's attention is directed to MPEP 409.03(b) for further guidance.

As to item (4), the petition fails to set forth the last known address of the non-signing inventor. Any renewed petition should include the last known address of the non-signing inventor.

As to item (5), petitioner has presented no corroborative evidence of proprietary interest in the instant application. Petitioner must establish that the invention has been assigned to applicant, that the inventor has agreed in writing to assign the invention to applicant, or that applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application. Petitioner must submit a copy of

an employment agreement between the inventor and applicant or a legal memorandum signed by an attorney familiar with the law of the relevant jurisdiction stating that a court of competent jurisdiction would by weight of authority in that jurisdiction award title of the invention to Rule 47 applicant.

The correspondence address contained in the instant petition differs from the correspondence address of record in this application. If petitioner desires to receive future correspondence at an address other than that currently of record, the appropriate change of correspondence address request must be promptly submitted. A courtesy copy of this decision will be mailed to both addresses. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

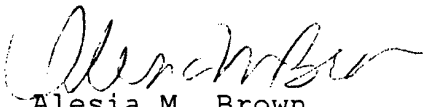
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



Alesia M. Brown  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

CC: MICHAEL F. HUGHES  
OUTLAND TECHNOLOGIES (USA), INC.  
3311-307 COTTON MILL DRIVE  
RALEIGH, NC 27612